

INSIGHTS

Gas Pipeline Safety Rule Clearing Final Hurdle: Operators Should Prepare

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The Pipeline and Hazardous Materials Safety Administration (PHMSA) is close to finalizing a rule applicable to the safety of natural gas transmission pipelines that has been nearly eight years in the making. Both Congress and the industry have urged PHMSA to issue a final rule and PHMSA has now signaled that the rule is currently awaiting final approval by the Office of Management and Budget (OMB). With a final rule that could be published in the coming weeks or months, pipeline operators should be prepared to review and modify their compliance programs as appropriate.

Gas Mega Rule

PHMSA's proposed rule was initiated in the aftermath of the 2010 San Bruno pipeline incident and relates to numerous National Transportation Safety Board (NTSB) recommendations associated with that incident. The rule is also intended to address Congressional mandates from prior reauthorizations of the Pipeline Safety Act, in 2011 and in 2016. These actions culminated in a sweeping proposed rulemaking in [2016](#) – which many refer to as the “gas mega rule.” If finalized as proposed, the rule would nearly double the length of the existing 49 C.F.R. Part 192 regulations, proposing numerous expansive revisions across the natural gas industry.

The proposed rule did result in an unprecedented number of comments from industry and stakeholder groups across a variety of issues, with a number of commenters asserting that the rule was issued hastily and without careful review. While it was initially focused on gas transmission pipelines, the proposed rulemaking was broadened to address gas gathering pipelines as well as distribution pipelines. The Agency explained the broader scope by saying that the rule was intended to address outstanding statutory mandates from the 2011 Pipeline Safety Act. One of the criticisms of the proposed rule that if it was intended to address issues beyond transmission lines, the proposal did not include sufficient supporting cost benefit analysis.

Reevaluated and Divided into Three Separate Rules

As the rule made its way through the statutory technical advisory committee **process** and through oversight of a Republican presidential administration focused on **deregulation**, what was once a hastily-issued mammoth proposed rulemaking became subject to a protracted review and reevaluation process focused on adherence to new Executive Orders and that included splitting the rule into three smaller rules. These **include** (1) a rulemaking focused primarily on satisfying outstanding statutory mandates titled “*Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments*”; (2) a rulemaking focused on “*Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments*,” and (3) a rulemaking focused on gathering pipelines titled “*Safety of Gas Gathering Pipelines*.”

The Agency’s timeliness in addressing statutory mandates, including in particular rulemaking mandates, has come under criticism recently as the Pipeline Safety Act (PSA) is currently being considered for reauthorization by Congress. In several **hearings** earlier this year, PHMSA faced pointed questions from Congressional representatives on the status of incomplete Congressional mandates and the status of these rulemakings. In addition, industry recently **requested** that PHMSA expedite the gas transmission pipeline safety rule in order to provide increased regulatory certainty and consistency.

First Rule Cleared DOT and Now Under OMB Review

Most recently, PHMSA has indicated that the first of these three rules is currently awaiting final approval by the OMB. As this initial rule is pending its final hurdle, operators should review new or revised regulatory obligations. Among expected changes are new requirements to confirm MAOP for certain transmission pipelines that have not been tested or that have inadequate records (with detailed options for doing so), and the expansion of integrity assessment requirements to a new category of “moderate consequences areas.” Other provisions include incorporating seismicity into data integration and risk analyses, a six month extension of the 7 year reassessment interval and regulations regarding MAOP exceedance reporting (although the latter was intended to be self-implementing in the 2011 statutory amendments).

Some Operators More Prepared for Final Rule than Others

While the rule has been eight years in the making, some operators have already proactively reviewed and reconfirmed the MAOP of their pipelines and undertaken additional risk analyses and testing of their gas transmission pipelines. Other operators have waited to better understand the new regulatory requirements and testing methods as finalized. Once final, the rulemaking will not go into effect for immediately (60 days) and even then, PHMSA has indicated that there will be a phased compliance period for operators to confirm the MAOP of their pipelines and perform required testing or replacement. Operators should have one year from the effective date of the rule to come up with a plan for MAOP reconfirmation and the rule is expected to require operators to reconfirmed MAOP for 50% of applicable mileage within 8 years and 100% within 15 years. Operators should have already reviewed records and

identified gaps for certain gas transmission pipelines and reported that mileage in PHMSA annual reports, so they should have a sense of the pipeline mileage that may require additional pressure testing and/or material testing. For those that have not, it would be prudent to proceed with a thorough review in anticipation of the final rule.

Projected August 2019 Issuance to Pave Way for Other Outstanding Rulemakings

In the Department of Transportation's (DOT) Significant Rulemaking Report in April 2019, DOT projected that a final rule would be published by August 20, 2019 and become effective by October 2019. DOT anticipates finalizing the other two rulemakings that were originally part of the gas mega rule, with the gas transmission integrity management rule to be issued by late 2019, and the gas gathering pipeline safety rule by the middle of 2020.

If PHMSA finalizes this rule and the pending liquid pipeline safety rule before this fall, it may pave the way for a more smooth PSA reauthorization process. It may also keep the focus of new Congressional mandates on gas distribution pipelines (as opposed to all pipelines) which have been at issue in numerous recent pipeline incidents as well as Congressional reauthorization testimony and questioning.